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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,958	07/03/2003	Aristide Barone	P07990US00/MP	3554

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ALEXANDRIA, VA 22314

EXAMINER

MAYO, TARA L

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/611,958		BARONE, ARISTIDE	
	<b>Examiner</b>		<b>Art Unit</b>	
	Tara L. Mayo		3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

1. The prior objections to the claims have been overcome by the response filed 18 October 2004.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1 through 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Toth (U.S. Patent No. 5,441,367).

Toth '367, as seen in Figure 2, discloses a balancing jacket (10) for diving activities comprising:

with regard to claim 3,

an inflatable chamber (17) consisting of a base element substantially having a plan C-shape, the central portion (25) of said base element being shaped as a U by applying a back element (15) made of fabric having a complementary shape with respect to the U shape, thus obtaining a horseshoe structure with two end portions (21) extending forward substantially at a right angle starting from said horseshoe structure;

with regard to claim 4,

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in which said tubular chamber is made with air-proof fabric (col. 3, lines 3 through 5),  
and constitutes the air chamber of the jacket; and

with regard to claim 6,

in which said back element is made of a net fabric.

With regard to claims 1 and 2, the method steps recited therein are inherent to the  
method of making the device shown by Toth '367 in Figure 2.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toth (U.S.  
Patent No. 5,441,367) in view of Lehrer et al. (U.S. Patent No. 5,707,177).

Toth '367 discloses all of the features of the claimed invention with the exception of:  
with regard to claim 5,

the tubular chamber containing a bladder constituting the air chamber of the jacket.

Lehrer et al. '177, as seen in Figures 1 through 3, show a balancing jacket (2) for diving activities comprising a plurality of inflatable chambers (4) each containing a bladder (20) and constituting the air chamber of the jacket for controlling the buoyancy of a diver.

With regard to claim 5, it would have been obvious to one having ordinary skill in the art of diving at the time of invention to modify the device shown by Toth '367 such that it would contain a bladder as taught by Lehrer et al. '177. The motivation would have been to implement a means by which to control the buoyancy of a diver.

#### *Response to Arguments*

6. Applicant's arguments filed 18 October 2004 have been fully considered but they are not persuasive.

The Examiner maintains the position that the inflatable chamber (17) shown by Toth '367 does have a plan C-shape (i.e., when the waist portions 21 are extended outwardly from the inflatable chamber) as recited in the claims.

With regard to the U-shaped back element, Toth '367 teaches a the same as set forth in the above Office action.

#### *Conclusion*

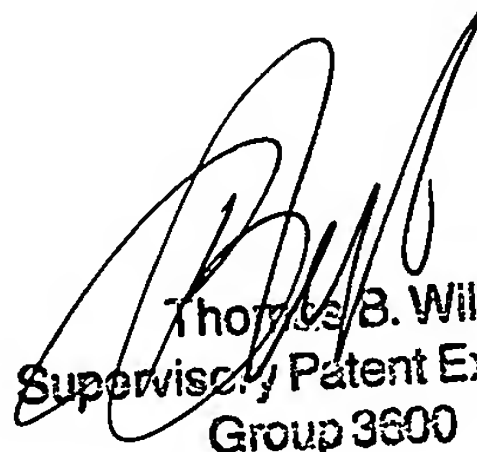
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

 tlm

22 December 2004

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600